

Court File No.

IN THE FEDERAL COURT OF CANADA

IN THE TRIAL DIVISION

B E T W E E N:

GLAD DAY BOOKSHOP INC. and
JEARLD MOLDENHAUER

Applicants

- and -

HER MAJESTY THE QUEEN,
MINISTER of NATIONAL REVENUE and
DEPUTY MINISTER of NATIONAL REVENUE for
CUSTOMS and EXCISE

Respondents

MOTION RECORD

ILER, CAMPBELL & ASSOCIATES
150 Simcoe Street
Toronto, Ontario
M5H 3G4

(416) 598-0103

Charles Campbell
Solicitor for the Applicants

TABLE OF CONTENTS

	Page
Notice of Motion, returnable November 20, 1989	3
Affidavit of Jearld Moldenhauer, dated October 25, 1988	6

Court File No.

IN THE FEDERAL COURT OF CANADA
IN THE TRIAL DIVISION

B E T W E E N :

GLAD DAY BOOKSHOP INC. and
JEARLD MOLDENHAUER

Applicants

- and -

HER MAJESTY THE QUEEN,
MINISTER of NATIONAL REVENUE and
DEPUTY MINISTER of NATIONAL REVENUE for
CUSTOMS and EXCISE

Respondents

A F F I D A V I T

I, JEARLD MOLDENHAUER, of the City of Toronto in the
Municipality of Metropolitan Toronto, MAKE OATH AND SAY:

1. I am the owner and operator of Glad Day Bookshop Inc.
located in the City of Toronto.
2. Glad Day is the principal bookstore in the gay community
in Toronto. I have been the owner and operator for 19 years. We
carry a full range of books and magazines of interest to the gay
and lesbian community from scholarly works, fiction, non-fiction

and erotica.

3. We have regularly imported books and magazines from the United States and elsewhere for sale in the store. They are typically shipped through Customs addressed care of the store or to the attention of individual staff members of the store.

4. Attached to this my affidavit and marked as indicated below are a series of Notices of Decision received from Canadian Customs with respect to certain seizures for alleged obscenity:

Exhibit "A" - November 29, 1988 - CO 7013

Exhibit "B" - November 30, 1988 - CO 7025

Exhibit "C" - December 5, 1988 - CO 7044

Exhibit "D" - December 5, 1988 - CO 7045

Exhibit "E" - December 8, 1988 - CO 7066

5. On April 7, 1989, I filed appeals from these decisions to the Deputy Minister of Customs and Excise pursuant to the provisions of the Customs Act and Regulations. There has been no decision on that appeal to this date. Attached to this my affidavit and marked as Exhibit "F" is a true copy of my submissions filed with the Deputy Minister on this appeal.

6. I am advised by Margaret Gillis, the Manager of the Prohibited Importations Unit of Canada Customs, that the appeal was referred by their office to the Department of Justice before being sent to the Deputy Minister for his decision. In a number of conversations with her, she has advised me that no decision has yet been made.

7. Attached to this my affidavit and marked as the Exhibits indicated below are true copies of the Notices of Decision regarding certain further seizures by the Department:

Exhibit "G" - August 2, 1989 - CO 0961
Exhibit "H" - August 2, 1989 - CO 0964
Exhibit "I" - August 2, 1989 - CO 0965
Exhibit "J" - August 2, 1989 - CO 0966
Exhibit "K" - August 2, 1989 - CO 0967
Exhibit "L" - October 3, 1989 - CO 1763
Exhibit "M" - October 4, 1989 - CO 1804
Exhibit "N" - October 4, 1989 - CO 1805
Exhibit "O" - October 4, 1989 - CO 1806

8. Margaret Gillis is the official who has custody of the seized material under the Customs Act at this time and is responsible for the continued detention.

9. By agreement with Margaret Gillis, no appeal has yet been filed from the Notices of Detention Exhibits "G" through "O". This was done without prejudice to our right to file appeals in these matters subsequent to the decision in the November/December 1988 seizures. She asserted, and I agreed, that many of the same books/magazines recurred in the successive shipments. She took the position in our oral conversations as I understood it that the first decision would govern the decision regarding the subsequent books.

10. Attached to this my affidavit and marked as Exhibit "P" is a true copy of a Notice of Detention with respect to a seizure August 10, 1989, FE 1017. This is the largest single seizure in this sequence. With respect to these books, there has not even been a decision made from which we could appeal. (Note that the form used by the Department is the same for the initial detention by Customs officials and the decision by Customs officials to detain the goods. The latter decision entails giving reasons by checking off a box).

11. Whatever the decision regarding the purported obscenity of the materials in question, the delays in determining the position of the Minister are financially prejudicial to my business operation. I have to pay for the books and magazines within 30

This is Exhibit.....B.....referred to in the
affidavit of Jeanne Moldenhauer
sworn before me, this.....25th.....
day of.....October.....1989.....
G. H. Hedema
A COMMISSIONER FOR TAKING AFFIDAVITS

GERARDUS YSAAK WILFRED HEDDEMA,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires September 8, 1992.

days of billing when they are purchased from American distributors. (I estimate the value of the detained material herein described at a wholesale value of \$5,000.00). Some of the titles involve time dated material and by the time decisions are made, will have lost their retail value. I am further concerned that it may damage my business relations with American distributors to try and return material to them one year after purchase should the Minister at this point determine that the material is obscene. They will probably refuse to take back the goods at this stage, especially if they even are slightly physically damaged through the ordeal.

12. As important is the fact that the cumulative effect of the delays is an infringement of the rights of free speech and expression of myself as a book dealer and of my customers and myself and my customers as readers.

13. The delays at the ministerial level are the first phase of delay in the determination of purported obscenity. We are not even able to exercise our rights of appeal under the Act until the Minister has made a determination. It took many months, even after the Minister's determination before the case could be determined at the trial level. We have previously successfully appealed the decision of the Minister regarding the book "The Joy of Gay Sex".

14. I make this affidavit in support of this application for an immediate release of the books in question and for no improper purpose.

SWORN before me at the City of)
Toronto in the Municipality of)
Metropolitan Toronto on 25th)
day of October , 1989.)


A Commissioner, etc.



GERALD MOLDENHAUER

GERALD MOLDENHAUER

64 64

GERARDUS YSAAK WILFRED HEDDIMA,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires September 8, 1992.

Court File No.

IN THE FEDERAL COURT OF CANADA
IN THE TRIAL DIVISION

B E T W E E N :

GLAD DAY BOOKSHOP INC. and
JEARLD MOLDENHAUER

Applicants

- and -

HER MAJESTY THE QUEEN,
MINISTER of NATIONAL REVENUE and
DEPUTY MINISTER of NATIONAL REVENUE
for CUSTOMS and EXCISE

Respondents

A F F I D A V I T

ILER, CAMPBELL AND ASSOCIATES
Barristers and Solicitors
150 Simcoe Street
Toronto, Ontario
M5H 3G4

(416) 598-0103

CHARLES CAMPBELL
Solicitor for the Applicants

This is Exhibit A referred to in the
affidavit of Jeannine Maledethauer
sworn before me, this 25th
day of October 1989.

A COMMISSIONER FOR TAKING AFFIDAVITS

GERARDUS YSAAK WILFRED HEDDEMA,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires September 8, 1992.

Importer / Importateur

NOTICE OF DETENTION/DETERMINATION
AVIS DE RETENUE OU DE CLASSEMENT TARIFAIRES

9956

JAMES MCPHEE
P.O. BOX 764 STN "F."
TORONTO M4Y 2N6

Regional Control No. N° de contrôle régional	3730-2/64T 2972
Point of Entry Bureau d'entrée	INT'L MAIL.
Point of Entry Control No. N° de contrôle du bureau d'entrée	COT 7013
Date	NOV 29 1988

PART A — NOTICE OF DETENTION

The following goods have been detained for a determination of tariff classification. Once a determination has been made, you will be notified in writing.

Description of goods / Désignation des marchandises

20 COPIES @ "MEATMEN CONTINUED"
VOL. 4

10 COPIES @ "MORE MEATMEN" VOL. 2

Exporter / Exportateur

INLAND Book Co., 254 Bradley St., P.O. Box 261
EAST HAVEN CONN.

PARTIE A — AVIS DE RETENUE

Les marchandises désignées ci-après ont été retenues aux fins du classement tarifaire.

Nous vous aviserons par écrit du classement effectué.

PART B — NOTICE OF DETERMINATION

The following goods have been examined and their importation into Canada is prohibited under the provisions of s. 114 of the Customs Tariff and code 9956 of Schedule VII.

2 Books Held

PARTIE B — AVIS DE CLASSEMENT TARIFAIRES

Après examen des marchandises désignées ci-après, il a été établi que leur importation au Canada est prohibée en vertu de l'article 114 du Tarif des douanes et du code 9956 de l'annexe VII.

This represents a determination pursuant to section 58 of the Customs Act. Your rights respecting this determination are set out on the reverse of this form.

Cette décision constitue un classement aux termes de l'article 58 de la Loi sur les douanes. Vos droits concernant ce classement sont énoncés au verso de la présente formule.

Dec. 6/88
Date of Determination / Date du classement

The following goods have been examined and their importation into Canada is admissible.

Après examen, il a été établi que les marchandises désignées ci-après sont admissibles au Canada.

Please contact Canada Customs at the point of entry to make arrangements for the payment of duties on the admissible goods.

Veuillez communiquer avec les douanes canadiennes au bureau d'entrée afin de prendre des arrangements pour le paiement des droits.

	Film	Type / Genre	Length / Longueur	Videotape Ruban magnétoscopique	Format	Time / Durée
SECTION 1	9956		mm			
	<input checked="" type="checkbox"/> Book Livre	<input type="checkbox"/> Record Disque		<input type="checkbox"/> Advertising Publicité	<input type="checkbox"/> Brochure Dépliant	
	<input type="checkbox"/> Magazine	<input type="checkbox"/> Audiolape Bande auditive		<input type="checkbox"/> Photograph Photographie	<input type="checkbox"/> Other Autre _____	
	<input type="checkbox"/> Comic Bande dessinée	<input type="checkbox"/> Playing Cards Jeu de cartes		<input type="checkbox"/> Booklet Livret		
	Mode of Transport / Mode de transport			Were goods declared? Les marchandises ont-elles été déclarées?		
				<input type="checkbox"/> Yes Oui <input type="checkbox"/> No Non		
If not declared, mode of concealment / Si non déclarées, mode de dissimulation						
SECTION 2	Classification (Memorandum D9-1-1)					
	a) Sex With Violence Violence sexuelle	b) Child Sex Pornographie enfantine	c) Incest Inceste	d) Bestiality Bestialité	e) Necrophilia Nécrophilie	f) Hate Propaganda Propagande haineuse
Title / Titre				Quantity / Quantité		
Date of Appeal / Date d'appel		Date sent to H.Q. / Date envoyé à l'A.C.		Disposition		
Continuation Sheet / Feuille supplémentaire						
<input type="checkbox"/> Yes / Oui <input type="checkbox"/> No / Non						

This is Exhibit.....D..... referred to in the
affidavit of Frank A. Maldenhauser
sworn before me, this25th.....
day of October1989.
G.W. Demeijer
A COMMISSIONER FOR TAKING AFFIDAVITS

GERARDUS YSAAK WILFRED HEDDEMA,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law
Expires September 8, 1992.

Importer / Importateur

NOTICE OF DETENTION/DETERMINATION
AVIS DE RETENUE OU DE CLASSEMENT TARIFAIRES

9956

JAMES MCPHEE
PO Box 764 STATION F
TORONTO - ONT
M4Y 2N6

Regional Control No. Nº de contrôle régional	3730-2/64T-2986
Point of Entry Bureau d'entrée	INT'L MAIL
Point of Entry Control No. Nº de contrôle du bureau d'entrée	CO 7025
Date	NOV. 30. 88

PART A — NOTICE OF DETENTION

The following goods have been detained for a determination of tariff classification. Once a determination has been made, you will be notified in writing.

Description of goods / Désignation des marchandises

15 BOOKS - "WHEN I WAS 18" PROHIBITED
15 BOOKS - "MEATMEN CONTINUED" VOL. 4 - PROHIBITED

Exporter / Exportateur

INCAN) Book Co. 254 BEADLEY St. PO BOX 261 - EAST HAVEN - CT.

PARTIE A — AVIS DE RETENUE

Les marchandises désignées ci-après ont été retenues aux fins du classement tarifaire.
Nous vous aviserons par écrit du classement effectué.

PART B — NOTICE OF DETERMINATION

The following goods have been examined and their importation into Canada is prohibited under the provisions of s. 114 of the Customs Tariff and code 9956 of Schedule VII.

2 Books held

PARTIE B — AVIS DE CLASSEMENT TARIFAIRES

Après examen des marchandises désignées ci-après, il a été établi que leur importation au Canada est prohibée en vertu de l'article 114 du Tarif des douanes et du code 9956 de l'annexe VII.

This represents a determination pursuant to section 58 of the Customs Act. Your rights respecting this determination are set out on the reverse of this form.

Cette décision constitue un classement aux termes de l'article 58 de la Loi sur les douanes. Vos droits concernant ce classement sont énoncés au verso de la présente forme.



Customs Officer / Agent des douanes

Commodity Specialist

Title / Titre

Dec. 7/88

Date of Determination / Date du classement

The following goods have been examined and their importation into Canada is admissible.

Après examen, il a été établi que les marchandises désignées ci-après sont admissibles au Canada.

Please contact Canada Customs at the point of entry to make arrangements for the payment of duties on the admissible goods.

Veuillez communiquer avec les douanes canadiennes au bureau d'entrée afin de prendre des arrangements pour le paiement des droits.

	Film	Type / Genre	Length / Longueur	Videotape Ruban magnétoscopique	Format	Time / Durée					
SECTION 1	9956		mm								
	<input checked="" type="checkbox"/> Book <input checked="" type="checkbox"/> Livre <input type="checkbox"/> Magazine <input type="checkbox"/> Magazine <input type="checkbox"/> Comic <input type="checkbox"/> Bande dessinée	<input type="checkbox"/> Record <input type="checkbox"/> Disque <input type="checkbox"/> Audiocassette <input type="checkbox"/> Bande auditive <input type="checkbox"/> Playing Cards <input type="checkbox"/> Jeu de cartes		<input type="checkbox"/> Advertising <input type="checkbox"/> Publicité <input type="checkbox"/> Photograph <input type="checkbox"/> Photographie <input type="checkbox"/> Booklet <input type="checkbox"/> Livret		<input type="checkbox"/> Brochure <input type="checkbox"/> Dépliant <input type="checkbox"/> Other <input type="checkbox"/> Autre _____					
Mode of Transport / Mode de transport			Were goods declared? Les marchandises ont-elles été déclarées?		<input checked="" type="checkbox"/> Yes Oui	<input type="checkbox"/> No Non					
If not declared, mode of concealment / Si non déclarées, mode de dissimulation											
SECTION 2	Classification (Memorandum D9-1-1)			<input type="checkbox"/> a) Sex With Violence <input type="checkbox"/> Violence sexuelle <input type="checkbox"/> b) Child Sex <input type="checkbox"/> Pornographie enfantine			<input type="checkbox"/> c) Incest <input type="checkbox"/> Inceste	<input type="checkbox"/> e) Necrophilia <input type="checkbox"/> Nécrophilie	<input type="checkbox"/> f) Hate Propaganda <input type="checkbox"/> Propagande haineuse	<input checked="" type="checkbox"/> g) Anal Penetration <input type="checkbox"/> Pénétration anale	<input type="checkbox"/> h) Other <input type="checkbox"/> Autre _____
	Title / Titre									Quantity / Quantité	
2	Date of Appeal / Date d'appel		Date sent to HQ / Date envoyée à l'A.C.			Disposition					
Continuation Sheet / Feuille supplémentaire							<input type="checkbox"/> Yes / Oui <input type="checkbox"/> No / Non				

This is Exhibit referred to in the
affidavit of Jeawld Mordenhauer
sworn before me, this 25th ..
day of October 1989.

Gerrardus Ysaak Wilfred Heddema,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires September 8, 1992.

Gerrardus Ysaak Wilfred Heddema,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires September 8, 1992.

NOTICE OF DETENTION/DETERMINATION
AVIS DE RETENUE OU DE CLASSEMENT TARIFAIRES

Importer / Importateur

9956

JAMES MCPHEE
P. O. Box 764 STATION F'
TOR. ONT. M4Y 2N6

Regional Control No. N° de contrôle régional	3730-2/64T-2962
Point of Entry Bureau d'entrée	INT'L MAIL
Point of Entry Control No. N° de contrôle du bureau d'entrée	CO 7044
Date	DEC. 5, 1988

PART A — NOTICE OF DETENTION

The following goods have been detained for a determination of tariff classification. Once a determination has been made, you will be notified in writing.

PARTIE A — AVIS DE RETENUE

Les marchandises désignées ci-après ont été retenues aux fins du classement tarifaire. Nous vous aviserez par écrit du classement effectué.

Description of goods / Désignation des marchandises

10X 'ORGASMS VOL TWO' | 10X 'LUST'
10X 'HOT ACTS'

Exporter / Exportateur

INLAND BOOK Co. 254 BRADLEY ST. P.O. Box 261 E. HAVEN CT 06812

PART B — NOTICE OF DETERMINATION

The following goods have been examined and their importation into Canada is prohibited under the provisions of s. 114 of the Customs Tariff and code 9956 of Schedule VII.

PARTIE B — AVIS DE CLASSEMENT TARIFAIRES

Après examen des marchandises désignées ci-après, il a été établi que leur importation au Canada est prohibée en vertu de l'article 114 du Tarif des douanes et du code 9956 de l'annexe VII.

3 Books held

This represents a determination pursuant to section 58 of the Customs Act. Your rights respecting this determination are set out on the reverse of this form.

Cette décision constitue un classement aux termes de l'article 58 de la Loi sur les douanes. Vos droits concernant ce classement sont énoncés au verso de la présente formule.

Customs Officer / Agent des douanes

Title / Titre

Date of Determination / Date du classement

The following goods have been examined and their importation into Canada is admissible

Après examen, il a été établi que les marchandises désignées ci-après sont admissibles au Canada.

Please contact Canada Customs at the point of entry to make arrangements for the payment of duties on the admissible goods.

Veuillez communiquer avec les douanes canadiennes au bureau d'entrée afin de prendre des arrangements pour le paiement des droits.

	Film	Type / Genre	Length / Longueur mm	Videotape Ruban magnétoscopique	Format	Time / Durée
SECTION 1	9956	Book Livre	<input type="checkbox"/> Record Disque	<input type="checkbox"/> Advertisement Publicité	<input type="checkbox"/> Brochure Dorlant	
		Magazine Magazine	<input type="checkbox"/> Audiotape Bande auditive	<input type="checkbox"/> Photograph Photographie	<input type="checkbox"/> Other Autre _____	
		Comic Bande dessinée	<input type="checkbox"/> Playing Cards Jeu de cartes	<input type="checkbox"/> Booklet Livret		
		Mode of Transport / Mode de transport	MAIL.	Were goods declared? Les marchandises ont-elles été déclarées?	<input checked="" type="checkbox"/> Yes Oui	<input type="checkbox"/> No Non
If not declared, mode of concealment / Si non déclarées, mode de dissimulation						
SECTION 2	Classification (Memorandum D9-1-1)			e) Necrophilia Nécrophilie	<input checked="" type="checkbox"/> g) Anal Penetration Pénétration anale	
	a) Sex With Violence Violence sexuelle	c) Incest Inceste	d) Bestiality Bestialité	f) Hate Propaganda Propagande haineuse	<input checked="" type="checkbox"/> h) Other Autre <i>BONDAGE AGGRESSION</i>	
Title / Titre					Quantity / Quantité	
Date of Appeal / Date d'appel		Date sent to HQ / Date envoyé à l'A.C.			Disposition	
Continuation Sheet / Feuille supplémentaire						
<input type="checkbox"/> Yes / Oui <input type="checkbox"/> No / Non						

This is Exhibit.....D.....referred to in the
affidavit of Jeanne Maldenhauser
sworn before me, this 25th.....
day of October.....1989.
G.W. Heddema
A COMMISSIONER FOR TAKING AFFIDAVITS

GERARDUS YSAAK WILFRED HEDDEMA,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires September 8, 1992.

NOTICE OF DETENTION/DETERMINATION
AVIS DE RETENUE OU DE CLASSEMENT TARIFAIRES

Importer / Importateur

9956

JAMES MCPHEE
P.O. BOX 764 STATION 'F'
TOR. ONT M4Y 2N6

Regional Control No. N° de contrôle régional	3730-2/6472963
Point of Entry Bureau d'entrée	INT'L MAIL.
Point of Entry Control No. N° de contrôle du bureau d'entrée	C07045
Date	DEC. 5, 1988

PART A — NOTICE OF DETENTION

The following goods have been detained for a determination of tariff classification. Once a determination has been made, you will be notified in writing.

Description of goods / Désignation des marchandises

20X "HUMONGOUS VOLS"

10X "MEATMEN CONTINUES VOL 4"

Exporter / Exportateur

INLAND Books Co. 254 BRADLEY ST. P.O. Box 261 E. HAVEN CT. 06512

PARTIE A — AVIS DE RETENUE

Les marchandises désignées ci-après ont été retenues aux fins du classement tarifaire. Nous vous aviserons par écrit du classement effectué.

PART B — NOTICE OF DETERMINATION

The following goods have been examined and their importation into Canada is prohibited under the provisions of s. 114 of the Customs Tariff and code 9956 of Schedule VII.

2 Books held

PARTIE B — AVIS DE CLASSEMENT TARIFAIRES

Après examen des marchandises désignées ci-après, il a été établi que leur importation au Canada est prohibée en vertu de l'article 114 du Tarif des douanes et du code 9956 de l'annexe VII.

This represents a determination pursuant to section 58 of the Customs Act. Your rights respecting this determination are set out on the reverse of this form.

Cette décision constitue un classement aux termes de l'article 58 de la Loi sur les douanes. Vos droits concernant ce classement sont énoncés au verso de la présente formule.

Customs Officer / Agent des douanes

Comm. Spec.

Title / Titre

Dec. 6/88

Date of Determination / Date du classement

The following goods have been examined and their importation into Canada is admissible.

Après examen, il a été établi que les marchandises désignées ci-après sont admissibles au Canada.

Please contact Canada Customs at the point of entry to make arrangements for the payment of duties on the admissible goods.

Veuillez communiquer avec les douanes canadiennes au bureau d'entrée afin de prendre des arrangements pour le paiement des droits.

	Film	Type / Genre	Length / Longueur	Videotape Ruban magnétoscopique	Format	Time / Durée
SECTION 1	9956		mm			
	<input type="checkbox"/> Book Livre	<input type="checkbox"/> Record Disque	<input type="checkbox"/> Advertisment Publicité	<input type="checkbox"/> Brochure Dépliant		
	<input type="checkbox"/> Magazine Magazine	<input type="checkbox"/> Audiotape Bande auditive	<input type="checkbox"/> Photograph Photographie	<input type="checkbox"/> Other Autre _____		
	<input type="checkbox"/> Comic Bande dessinée	<input type="checkbox"/> Playing Cards Jeu de cartes	<input type="checkbox"/> Booklet Livrelet			
Mode of Transport / Mode de transport			Were goods declared? Les marchandises ont-elles été déclarées?	<input checked="" type="checkbox"/> Yes Oui	<input type="checkbox"/> No Non	
If not declared, mode of concealment / Si non déclarées, mode de dissimulation						
SECTION 2	Classification (Memorandum D9-1-1)					
	a) Sex With Violence Violence sexuelle	c) Incest Inceste	e) Necrophilia Nécrophilie	<input checked="" type="checkbox"/> f) Anal Penetration Pénétration anale		
b) Child Sex Pornographie enfantine	d) Bestiality Bestialité	f) Hate Propaganda Propagande haineuse	<input type="checkbox"/> g) Other Autre _____			
Title / Titre				Quantity / Quantité		
Date of Appeal / Date d'appel	Date sent to H.Q. / Date envoyé à l'A.C.		Disposition			
Continuation Sheet / Feuille supplémentaire				<input type="checkbox"/> Yes / Oui	<input type="checkbox"/> No / Non	



Importer / Importateur

JAMES MCPHAIL
P.O. BOX 764 SW.F
TORONTO M4Y 2N6

NOTICE OF DETENTION/DETERMINATION
AVIS DE RETENUE OU DE CLASSEMENT TARIFAIRES

9956

Regional Control No 3730-2/64T-3011
N° de contrôle régional

Point of Entry
Bureau d'entrée

INT'L MAIL

Point of Entry Control No.
N° de contrôle du bureau d'entrée

C07066

Date

DEC 8 ' 88.

PART A — NOTICE OF DETENTION

The following goods have been detained for a determination of tariff classification. Once a determination has been made, you will be notified in writing.

PARTIE A — AVIS DE RETENUE

Les marchandises désignées ci-après ont été retenues aux fins du classement tarifaire. Nous vous aviserons par écrit du classement effectué.

Description of goods / Description des marchandises

1 MAGAZINE KAKS "VIOLENT VISITOR" - 6 MAGAZINES KAKS
13 "SIGHTSEEING THE GUARDS" - 4 MAGAZINES KAKS
"POSTAL RAPE" - 3 MAGAZINES "TOM OF FINLAND".
Exporter / Exportateur
THE CHRISTIAN FELLOWSHIP 1421 LAVETA TERRACE LOS ANG. CA.

PART B — NOTICE OF DETERMINATION

The following goods have been examined and their importation into Canada is prohibited under the provisions of s. 114 of the Customs Tariff and code 9956 of Schedule VII.

14 magazines held

PARTIE B — AVIS DE CLASSEMENT TARIFAIRES

Après examen des marchandises désignées ci-après, il a été établi que leur importation au Canada est prohibée en vertu de l'article 114 du Tarif des douanes et du code 9956 de l'annexe VII.

Customs and Excise Services et Accise
P.O. Box 10, Section "A"
Toronto, Ontario
M5W 1A8

This represents a determination pursuant to section 58 of the Customs Act. Your rights respecting this determination are set out on the reverse of this form.

Cette décision constitue un classement aux termes de l'article 58 de la Loi sur les douanes. Vos droits concernant ce classement sont énoncés au verso de la présente formule.

J. Thompson

Commodity
Title / Titre
Specialist

Dec. 12/88
Date of Determination / Date du classement

The following goods have been examined and their importation into Canada is admissible.

Après examen, il a été établi que les marchandises désignées ci-après sont admissibles au Canada.

Please contact Canada Customs at the point of entry to make arrangements for the payment of duties on the admissible goods.

Veuillez communiquer avec les douanes canadiennes au bureau d'entrée afin de prendre des arrangements pour le paiement des droits.

	Film	Type / Genre	Length / Longueur	Videotape Ruban magnétoscopique	Format	Time / Durée
SECTION 1	9956		mm			
	<input type="checkbox"/> Book <input type="checkbox"/> Livre	<input type="checkbox"/> Record Disque	<input type="checkbox"/> Advertising Publicité	<input type="checkbox"/> Brochure Dépliant		
	<input checked="" type="checkbox"/> Magazine <input type="checkbox"/> Magazine	<input type="checkbox"/> Audiocassette Bande auditive	<input type="checkbox"/> Photograph Photographie	<input type="checkbox"/> Other Autre _____		
	<input type="checkbox"/> Comic Bande dessinée	<input type="checkbox"/> Playing Cards Jeu de cartes	<input type="checkbox"/> Booklet Livre			
Mode of Transport / Mode de transport		Were goods declared? Les marchandises ont-elles été déclarées?		<input checked="" type="checkbox"/> Yes Oui	<input type="checkbox"/> No Non	
If not declared, mode of concealment / Si non déclarées, mode de dissimulation						
SECTION 2	Classification (Memorandum D9-1-1)					
	<input checked="" type="checkbox"/> a) Sex With Violence Violence sexuelle	<input type="checkbox"/> c) Incest Inceste	<input type="checkbox"/> e) Necrophilia Nécrophilie	<input checked="" type="checkbox"/> g) Anal Penetration Penetration anale		
<input type="checkbox"/> b) Child Sex Pornographie enfantine	<input type="checkbox"/> d) Bestiality Bestialité	<input type="checkbox"/> f) Hate Propaganda Propagande haineuse	<input checked="" type="checkbox"/> h) Other Autre	Quantity / Quantité		
Title / Titre						
Date of Appeal / Date d'appel		Date sent to H.Q. / Date envoyée à l'A.C.		Disposition		
				<input type="checkbox"/> Yes / Oui	<input type="checkbox"/> No / Non	

Continuation Sheet / Feuille supplémentaire

MINISTÈRE DU REVENU NATIONAL — DOUANES ET ACCISE

This is Exhibit..... F referred to in the
affidavit of Donald Moltzenhauer....
sworn before me, this..... 25th.....
day of..... Oct. 1989..... 79-802

W.
April 7, 1989

The Deputy Minister of National Revenue & Excise
1 Front Street West, 3rd Floor
P.O. Box 10, Station A
Toronto, Ontario
MSW 1A3

G.W. Hedde
A COMMISSIONER FOR TAKING AFFIDAVITS

Re: Files #3730-2/64T 3011; 2986; 2972; 2963; 2960
while a Student-at-Law.
Expires September 8, 1992.

Dear Deputy Minister:

There are a number of points which need to be made concerning the gay/lesbian community's perspective on the seizures and banning of books such as the titles involved above. These perspectives have in common that they reflect ways of looking at literature which deals with our sexuality that someone outside our community might not appreciate, at least until taking the time to consider these arguments. It is with this in mind, together with the hope that your exercise of power incorporates a sincere appreciation for genuine cultural diversity in Canada, that I make this appeal on behalf of my bookshop and my community. A government interested in being sensitive to its pluralistic nature would be wise to consider the unique sociological aspects of the gay and lesbian community rather than to continue its present approach.

Gay & lesbian people constitute a distinct social minority in Canadian society, comprising somewhere around 10% of the population. As a part of the Canadian social fabric, our situation is similar to many racial, ethnic or religious minorities, except of course, we are defined by our sexuality. One should understand that "sexuality" is meant to encompass our emotional, physical and aesthetic relationships with each other and the world.

The gay & lesbian community is, at least on a visible level, a relatively new development in modern western societies. Viewed within the brief context of the past twenty years we have come a fair distance in terms of both legal reforms and in the construction of a genuine community with its own values, mores and tangible cultural institutions such as a media network and myriad of social & political organizations. As a social minority we are very much still in the position of realizing our long suppressed identity (somewhat analogous, if I may suggest, to the present & actively ongoing quest for a distinct Canadian identity) and asserting our rights as members of a group which has often been subjected to various forms of violence by both the State & society. These manifestations of homophobia take many forms, the harassment and persecution by Canada Customs being our present focal point.

.../2

As a group made up of individuals who realize their gay or lesbian identity only after growing up submerged in an aggressive & essentially anti-gay heterosexual culture, we rely on media (books, periodicals, films) to both explore our emerging identity and to make connections within our community. We are unlike any other social group in this special relationship to our literature & visual arts. One might even go so far as to conjecture that printed material has and continues to play an inestimably major role in the creation & evolution of our particular community.

It is for this very reason which I started both the Glad Day Bookshop in 1970 and the now defunct (after 15 years) The Body Politic news journal. And it is for this same reason that, in 1986, I characterized the attacks on gay and lesbian literature by Canada Customs as a form of "cultural genocide".

It is especially ironic that a government which enacted laws against "hate literature" perpetuates its own form of "hate literature" within the infamous Memorandum D9-1-1, highlighted by the reference to "anal sex" but including several other categories of "forbidden thought" which through censorship militate ignorance, prejudice and silence on a number of areas of human sexual experience. For homosexual acts to be legal in a country and for governments, both provincial and municipal, to have enacted various measures to protect the rights of the gay & lesbian population, while the current federal government institutes and upholds an internal memorandum (not legislated) against the citizen's right to read about homosexual acts is a simple unequivocal form of hate mongering of the worst sort.

The government poses as the protector of freedom while violating the rights of citizens it should be protecting. Put another way, instead of defending the weakest members of society from the prejudices of the masses, the government itself sets the tone of intolerance and oppression as perpetrator of its own instrument of hate, D9-1-1. It would seem to provide a classic example of a misuse of power by the State and bolster the argument that the State should not exercise control over any area of freedom of speech in a society which purports to be a true democracy.

Literature such as any of the Gay Sunshine Press Publications or Leyland Publishers are published by our own community's oldest publishers and distributed to literally thousands of North American bookstores by the most reputable small press book distributors in the United States. These titles all deal with matters of interest to the gay male community -- our sexuality and relationships. Some handle these topics in a playful & simply pleasure oriented manner while others explore ideas and situations encountered in gay life.

The gay comic anthologies and works by Tom of Finland represent the creative achievements of individuals who are major figures in the cultural backbone of our community. Tom of Finland is the senior figure in this school of art and has recently been celebrated by shows in American and European art galleries, as well as the publication of a 40 year retrospective of his work. The other artists work has all appeared previously in such important gay publications as the Advocate, Bay Area Reporter, and In Touch. Any examination of the collections would, of course, show the reader that matters of sexuality and sexual politics are dealt with by comic artists in an essentially playful manner which is capable of providing insights into human situations which other forms of communication may not achieve so effectively.

All play a role in helping gay men to better realize the nature of our sexuality and to provide an outlet for many people who are not able, for one reason or another (a primary one being age, followed by things such as physical handicaps) to interact with other members of their community. Of course many people enjoy such literature simply as a part of their varied programme of reading.

This goes without stating the most obvious of all "uses" of erotic literature (and videos, for that matter) within the gay male community: the reduction of sexual encounters whereby the AIDS virus is transmitted from one individual to another. It should be obvious to any rational caring individual in society (including government bureaucrats who are "just following orders") that activities which reduces the probability of individuals contracting the deadly disease -- and thereby reduces human suffering and loss -- not to mention enormous expense to the social welfare, is a good thing.

The points I've tried to make seem obvious to most gay/lesbian people. I know from plenty of experience that while Canada Customs officers are not trained in such matters as social tolerance and individual rights under the Charter, they certainly do reflect more than their share of social prejudice toward minorities, at least through rampant homophobic behaviour. This statement is being submitted with the hope that our perspectives, once outlined, might help in your interpretation of both the books in question and in your role as authorities over what Canadians can read. We hope that tolerance, compassion and social justice will prevail.

Sincerely,

Jearld Moldenhauer

p.s. Two recent articles examining the work of Tom of Finland are included for your consideration.

6

This is Exhibit..... referred to in the
affidavit of Jeanne Maldenhausen
sworn before me, this 25th
day of October, 1989.
GHD
.....
A COMMISSIONER FOR TAKING AFFIDAVITS

GERARDUS YSAAK WILFRED HEDDEMA,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires September 8, 1992.

Glad Day Bookshop

58A Yonge St.

Toronto, Ont.

M4Y 1Z3

Imported from Glad Day Bookshop, 58A Yonge Street, Toronto, Ontario M4Y 1Z3, Canada.

NOTICE OF DETENTION/DETERMINATION
AVIS DE RETENUE OU DE CLASSEMENT TARIFAIRES

Canada

9956

Regional Control No. Nº de contrôle régional	3730-2 / 64T 1395
Point of Entry Bureau d'entrée	Int'l Mail
Point of Entry Control No. Nº de contrôle du bureau d'entrée	CO 0961
Date	Aug 2, 1989

PART A — NOTICE OF DETENTION

The following goods have been detained for a determination of tariff classification. Once a determination has been made, you will be notified in writing.

Description of goods / Désignation des marchandises

10 Magazines- " Berliner Jungs "
2 Magazines- " Arjun "

Exporter / Exportateur

VAH Ottensen Str. 131 D-2000 Hamburg 54

PART B — NOTICE OF DETERMINATION

The following goods have been examined and their importation into Canada is prohibited under the provisions of s. 114 of the Customs Tariff and code 9956 of Schedule VIII.)

10 magazines held
2 magazines

This represents a determination pursuant to section 58 of the Customs Act. Your rights respecting this determination are set out on the reverse of this form.

Customs Officer / Agent des douanes

The following goods have been examined and their importation into Canada is admissible.

Please contact Canada Customs at the point of entry to make arrangements for the payment of duties on the admissible goods.

PARTIE A — AVIS DE RETENUE

Les marchandises désignées ci-après ont été retenues aux fins du classement tarifaire. Nous vous aviserons par écrit du classement effectué.

PARTIE B — AVIS DE CLASSEMENT TARIFAIRES

Après examen des marchandises désignées ci-après, il a été établi que leur importation au Canada est prohibée en vertu de l'article 114 du Tarif des douanes et du code 9956 de l'annexe VII.

Cette décision constitue un classement aux termes de l'article 58 de la Loi sur les douanes. Vos droits concernant ce classement sont énoncés au verso de la présente forme.

Title / Titre

Date of Determination / Date du classement

Aug. 15/89

Après examen, il a été établi que les marchandises désignées ci-après sont admissibles au Canada.

Après examen, il a été établi que les marchandises désignées ci-après sont admissibles au Canada.

Veuillez communiquer avec les douanes canadiennes au bureau d'entrée afin de prendre des arrangements pour le paiement des droits.

Type / Genre	Length / Longueur
<input checked="" type="checkbox"/> Film	mm

Video	Videotape	Format	Time / Durée
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Ruban magnétoscopique	(175C not included)	1600 ft hrs. min sec

Classification (Memorandum D9-1-1)	a) Sex With Violence	b) Child Sex Pornography enfantine	c) Incest	d) Bestiality	e) Necrophilia	f) Hate Propaganda Propagande haineuse	g) Anal Penetration Pénétration anale	h) Other Autre
------------------------------------	----------------------	------------------------------------	-----------	---------------	----------------	--	---------------------------------------	----------------

Were goods declared?	Yes / Oui	No / Non
Les marchandises ont-elles été déclarées?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Mode of Transport / Mode de transport	Mail
---------------------------------------	------

Quantity / Quantité

Date of Appeal / Date d'appel	Date sent to H.Q. / Date envoyé à l'A.C.	Disposition
-------------------------------	--	-------------

<input type="checkbox"/> Yes / Oui	<input type="checkbox"/> No / Non
------------------------------------	-----------------------------------

Continuation Sheet / Feuille supplémentaire

Prohibited Importations Unit
Commodity Specialist Section
P.O. Box 10, Station "A"
Toronto Region
Toronto, Ontario
MSW 1A3

FILE NO. 8730-2/64T-1395 DATED Aug 15 89

Tariff code 9956 covers "Books, printed paper, drawings, paintings, prints, photographs or representations of any kind that

- (a) are deemed to be obscene under subsection 159 (8) of the Criminal Code;
- (b) constitute hate propaganda within the meaning of subsection 281.3(8) of the Criminal Code;
- (c) are of a treasonable character within the meaning of section 46 of the Criminal Code; or
- (d) are of a seditious character within the meaning of sections 60 and 61 of the Criminal Code".

The goods have been examined and their importation into Canada is prohibited under the provisions of section 114 of the Customs Tariff and code 9956 of Schedule V11.

PLEASE READ THE BACK OF YOUR NOTICE OF DETENTION/DETERMINATION (FORM K27) FOR YOUR OPTIONS. INDICATE YOUR DECISION BELOW AND RETURN THIS FORM TO THE ADDRESS INDICATED ABOVE.

- (1) ABANDON GOODS TO THE CROWN FOR SUBSEQUENT DESTRUCTION
- (2) APPEAL THIS DETERMINATION PURSUANT TO SECTION 60 OF THE CUSTOMS ACT ON FORM B2 WITHIN 90 DAYS OF THE DATE OF THE WRITTEN NOTICE. FORMS OBTAINABLE AT ANY CUSTOMS OFFICE
- (3) EXPORT GOODS FROM CANADA UNDER CUSTOMS SUPERVISION AND AT IMPORTER'S EXPENSE

IF BLOCK (2) IS CHECKED Appeals on Form B2 fully completed and signed, should be directed to:

Revenue Canada Customs & Excise
P.O. Box 10, Station "A"
Toronto, Ontario
MSW 1A3
ATTN: TPA Unit E Rulings & Appeals

IF BLOCK (3) IS CHECKED

Goods may be exported by any means other than through the mails, providing this is done under Customs supervision and at importers expense. Since Canada Post prohibits the use of the mailing system for Obscene Matter you must make arrangements with a Canada Customs Bonded Carrier to export the goods from Canada

When arrangements have been made by you, please contact the following Point of Entry:

International Mail, Arsenals,
1400 Lakeshore Rd. E.
Mississauga, Ontario
L5E 1E9

Telephone: 278-6711.
Tel. No. 973-8140

RBR
For C.P.A. Bodanis
HEAD, PROHIBITED IMPORTATIONS UNIT.

This is Exhibit.....^H referred to in the
affidavit of Donald Molenhauer
sworn before me, this 25th
day of October, 1989.

A COMMISSIONER FOR TAKING AFFIDAVITS

GERARDUS YSAAK WILFRED HEDDEMA,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires September 8, 1992.

T. P. A.
Prohibited Importations Unit
Commodity Specialist Section
P.O. Box 10, Station "A"
Toronto Region
Toronto, Ontario
MSW 1A3

FILE NO. 3730-2/64T-1268 DATED Aug. 3/89.

Tariff code 9956 covers "Books, printed paper, drawings, paintings, prints, photographs or representations of any kind that

- (a) are deemed to be obscene under subsection 159 (8) of the Criminal Code;
- (b) constitute hate propaganda within the meaning of subsection 281.3(8) of the Criminal Code;
- (c) are of a treasonable character within the meaning of section 46 of the Criminal Code; or
- (d) are of a seditious character within the meaning of sections 60 and 61 of the Criminal Code".

The goods have been examined and their importation into Canada is prohibited under the provisions of section 114 of the Customs Tariff and code 9956 of Schedule V11.

PLEASE READ THE BACK OF YOUR NOTICE OF DETENTION/DETERMINATION (FORM K27) FOR YOUR OPTIONS. INDICATE YOUR DECISION BELOW AND RETURN THIS FORM TO THE ADDRESS INDICATED ABOVE.

- (1) ABANDON GOODS TO THE CROWN FOR SUBSEQUENT DESTRUCTION
- (2) APPEAL THIS DETERMINATION PURSUANT TO SECTION 60 OF THE CUSTOMS ACT ON FORM B2 WITHIN 90 DAYS OF THE DATE OF THE WRITTEN NOTICE. FORMS OBTAINABLE AT ANY CUSTOMS OFFICE
- (3) EXPORT GOODS FROM CANADA UNDER CUSTOMS SUPERVISION AND AT IMPORTER'S EXPENSE

IF BLOCK (2) IS CHECKED Appeals on Form B2 fully completed and signed, should be directed to:

Revenue Canada Customs & Excise
P.O. Box 10, Station "A"
Toronto, Ontario
MSW 1A3
ATTN: TPA Unit E Rulings & Appeals

IF BLOCK (3) IS CHECKED Goods may be exported by any means other than through the mails, providing this is done under Customs supervision and at importers expense. Since Canada Post prohibits the use of the mailing system for Obscene Matter you must make arrangements with a Canada Customs Bonded Carrier to export the goods from Canada

When arrangements have been made by you, please contact the following Point of Entry:

International Mail, Arsenals,
1400 Lakeshore Rd. E.
Mississauga, Ontario
L5E 1E9

Telephone: 278-6711.
Tel. No. 973-8140

Wenay M. Segal
For C.P.A. Bodanis

HEAD, PROHIBITED IMPORTATIONS UNIT.

I
This is Exhibit..... referred to in the
affidavit of Jeannine Maldenbaumer
sworn before me, this 25th
day of October 1987.

A COMMISSIONER FOR TAKING AFFIDAVITS

GERARDUS YSAAK WILFRED HEDDEMA,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires September 8, 1992.

Revenue Canada
Customs and ExciseRevenu Canada
Douanes et Accise

Importer / Importateur

NOTICE OF DETENTION/DETERMINATION
AVIS DE RETENUE OU DE CLASSEMENT TARIFAIRESprohibited
Canada

9956

Glad Day Bookshop

598A Yonge St. Glad Day Bookshop located at 598A Yonge Street,
Toronto, Ont. M4Y 1Z3 Your goods, 30 magazines, are being held by us.
 (notified by telephone or mail)

Regional Control No.
N° de contrôle régional

3730-2/64T-1269

Point of Entry

Int'l Mail

Bureau d'entrée

Point of Entry Control No.

CO 0965

N° de contrôle du bureau d'entrée

Date

Aug 2nd 1989

PART A — NOTICE OF DETENTION

The following goods have been detained for a determination of tariff classification. Once a determination has been made, you will be notified in writing.

Description of goods / Désignation des marchandises

30 Magazines- " When I Was 18 " 10 pcs
 (Books) " Hard " 10 pcs
 " Lust " 10 pcs

Exporter / Exportateur

Bookpeople 2029 Fifth St. Ca. 94710

PARTIE A — AVIS DE RETENUE

Les marchandises désignées ci-après ont été retenues aux fins du classement tarifaire. Nous vous aviserons par écrit du classement effectué.

(3 Books SENT AS SAMPLES)

PART B — NOTICE OF DETERMINATION

The following goods have been examined and their importation into Canada is prohibited under the provisions of s. 114 of the Customs Tariff and code 9956 of Schedule VII.

3 MAGAZINES HEAVY COHEN
HARD
LUST

This represents a determination pursuant to section 58 of the Customs Act. Your rights respecting this determination are set out on the reverse of this form.

Customs Officer / Agent des douanes

Antenne

PARTIE B — AVIS DE CLASSEMENT TARIFIARE

Après examen des marchandises désignées ci-après, il a été établi que leur importation au Canada est prohibée en vertu de l'article 114 du Tarif des douanes et du code 9956 de l'annexe VII.

I WAS 18
Specialty

Cette décision constitue un classement aux termes de l'article 58 de la Loi sur les douanes. Vos droits concernant ce classement sont énoncés au verso de la présente forme.

Date of Determination / Date du classement

03/08/89

Title / Titre

The following goods have been examined and their importation into Canada is admissible.

Please contact Cahada Customs at the point of entry to make arrangements for the payment of duties on the admissible goods.

Après examen, il a été établi que les marchandises désignées ci-après sont admissibles au Canada.

Il est recommandé à l'importateur de faire connaître le destinataire de ces marchandises et de déclarer les droits (1) à son importateur et faire mention de la valeur de ces marchandises.

Veuillez communiquer avec les douanes canadiennes au bureau d'entrée afin de prendre des arrangements pour le paiement des droits.

Type / Genre	Length / Longueur
Film	(1) 80 mm
Book	mm

Vidéotape	Format	Time / Durée
Ruban	(1) 80 mm	min
magnétoscopique	(1) 80 mm	min

9956	Record	Publicité	Brochure
<input checked="" type="checkbox"/> Film	Disque	Photographie	Dépliant
<input type="checkbox"/> Book	Audiocassette	Booklet	Other
<input type="checkbox"/> Magazine	Bande auditive	Livret	
<input type="checkbox"/> Magazine			
<input type="checkbox"/> Comic	Playing Cards		
<input type="checkbox"/> Bande dessinée	Jeu de cartes		

Advertissement	Publicité	Brochure
<input type="checkbox"/>	Photographie	Dépliant
	Booklet	Other
	Livret	

Mode of Transport / Mode de transport	Were goods declared?
Mail	Les marchandises ont-elles été déclarées?

Yes
Oui No
Non

If not declared, mode of concealment / Si non déclarées, mode de dissimulation
--

Classification (Memorandum D9-1-1)	e) Necrophilia	g) Anal Penetration
a) Sex With Violence	f) Hate Propaganda	Pénétration anale
Violence sexuelle	Nécrophilie	
b) Child Sex	Propagande haineuse	
Pornographie enfantine		

c) Incest	<input type="checkbox"/> h) Other
Inceste	Autre
d) Bestiality	
Bestialité	

Title / Titre	Quantity / Quantité
---------------	---------------------

Date of Appeal / Date d'appel	Date sent to H.Q. / Date envoyé à l'A.C.	Disposition
-------------------------------	--	-------------

<input type="checkbox"/> Yes / Oui	<input type="checkbox"/> No / Non
------------------------------------	-----------------------------------

Continuation Sheet / Feuille supplémentaire

T. P. A.
Prohibited Importations Unit
Commodity Specialist Section
P.O. Box 10, Station "A"
Toronto Region
Toronto, Ontario
MSW 1A3

FILE NO. 3730-2/647-1269 DATED Aug. 3/89.

Tariff code 9956 covers "Books, printed paper, drawings, paintings, prints, photographs or representations of any kind that

- (a) are deemed to be obscene under subsection 159 (8) of the Criminal Code;
- (b) constitute hate propaganda within the meaning of subsection 281.3(8) of the Criminal Code;
- (c) are of a treasonable character within the meaning of section 46 of the Criminal Code; or
- (d) are of a seditious character within the meaning of sections 60 and 61 of the Criminal Code".

The goods have been examined and their importation into Canada is prohibited under the provisions of section 114 of the Customs Tariff and code 9956 of Schedule V11.

PLEASE READ THE BACK OF YOUR NOTICE OF DETENTION/DETERMINATION (FORM K27) FOR YOUR OPTIONS. INDICATE YOUR DECISION BELOW AND RETURN THIS FORM TO THE ADDRESS INDICATED ABOVE.

- (1) ABANDON GOODS TO THE CROWN FOR SUBSEQUENT DESTRUCTION
- (2) APPEAL THIS DETERMINATION PURSUANT TO SECTION 60 OF THE CUSTOMS ACT ON FORM B2 WITHIN 90 DAYS OF THE DATE OF THE WRITTEN NOTICE. FORMS OBTAINABLE AT ANY CUSTOMS OFFICE
- (3) EXPORT GOODS FROM CANADA UNDER CUSTOMS SUPERVISION AND AT IMPORTER'S EXPENSE

IF BLOCK (2) IS CHECKED Appeals on Form B2 fully completed and signed, should be directed to:

Revenue Canada Customs & Excise
P.O. Box 10, Station "A"
Toronto, Ontario
MSW 1A3
ATTN: TPA Unit E Rulings & Appeals

IF BLOCK (3) IS CHECKED Goods may be exported by any means other than through the mails, providing this is done under Customs supervision and at importers expense. Since Canada Post prohibits the use of the mailing system for Obscene Matter you must make arrangements with a Canada Customs Bonded Carrier to export the goods from Canada

When arrangements have been made by you, please contact the following Point of Entry:

International Mail, Arsenals,
1400 Lakeshore Rd. E.
Mississauga, Ontario
L5E 1E9

Telephone: 278-6711.
Tel. No. 973-8140

Murray Wragg
For C.P.A. Bodans
HEAD, PROHIBITED IMPORTATIONS UNIT.

This is Exhibit.....J referred to in the
affidavit of Gerardus Ysaak Wilfred Heddema
sworn before me, this 25th.....
day of October 1989.
G. W. Heddema
A COMMISSIONER FOR TAKING AFFIDAVITS

GERARDUS YSAAK WILFRED HEDDEMA,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires September 8, 1992.

T. P. A.
Prohibited Importations Unit
Commodity Specialist Section
P.O. Box 10, Station "A"
Toronto Region
Toronto, Ontario
MSW 1A3

FILE NO. 3730-2/64T-1270 DATED Aug. 3/89.

Tariff code 9956 covers "Books, printed paper, drawings, paintings, prints, photographs or representations of any kind that

- (a) are deemed to be obscene under subsection 159 (8) of the Criminal Code;
- (b) constitute hate propaganda within the meaning of subsection 281.3(8) of the Criminal Code;
- (c) are of a treasonable character within the meaning of section 46 of the Criminal Code; or
- (d) are of a seditious character within the meaning of sections 60 and 61 of the Criminal Code".

The goods have been examined and their importation into Canada is prohibited under the provisions of section 114 of the Customs Tariff and code 9956 of Schedule V11.

PLEASE READ THE BACK OF YOUR NOTICE OF DETENTION/DETERMINATION (FORM K27) FOR YOUR OPTIONS. INDICATE YOUR DECISION BELOW AND RETURN THIS FORM TO THE ADDRESS INDICATED ABOVE.

- (1) ABANDON GOODS TO THE CROWN FOR SUBSEQUENT DESTRUCTION
- (2) APPEAL THIS DETERMINATION PURSUANT TO SECTION 60 OF THE CUSTOMS ACT ON FORM E2 WITHIN 90 DAYS OF THE DATE OF THE WRITTEN NOTICE. FORMS OBTAINABLE AT ANY CUSTOMS OFFICE
- (3) EXPORT GOODS FROM CANADA UNDER CUSTOMS SUPERVISION AND AT IMPORTER'S EXPENSE

IF BLOCK (2) IS CHECKED Appeals on Form E2 fully completed and signed, should be directed to:

Revenue Canada Customs & Excise
P.O. Box 10, Station "A"
Toronto, Ontario
MSW 1A3
ATTN: TPA Unit E Rulings & Appeals

IF BLOCK (3) IS CHECKED Goods may be exported by any means other than through the mails, providing this is done under Customs supervision and at importers expense. Since Canada Post prohibits the use of the mailing system for Obscene Matter you must make arrangements with a Canada Customs Bonded Carrier to export the goods from Canada

When arrangements have been made by you, please contact the following Point of Entry:

International Mail, Arsenals,
1400 Lakeshore Rd. E.
Mississauga, Ontario
L5E 1E9

Telephone: 278-6711.
Tel. No. 973-8140

For C.P.A. Bodans

HEAD, PROHIBITED IMPORTATIONS UNIT.

This is Exhibit.....JC
referred to in the
affidavit of Gerardus Ysaak Wilfred Heddema
sworn before me, this 29th
day of October, 1983.
G. H. Heddema
A COMMISSIONER FOR TAKING AFFIDAVITS

GERARDUS YSAAK WILFRED HEDDEMA,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires September 8, 1992.

T. P. A.
Prohibited Importations Unit
Commodity Specialist Section
P.O. Box 10, Station "A"
Toronto Region
Toronto, Ontario
MSW 1A3

FILE NO. 3730-2/64T-1271 DATED AUG. 3/89.

Tariff code 9956 covers "Books, printed paper, drawings, paintings, prints, photographs or representations of any kind that

- (a) are deemed to be obscene under subsection 159 (8) of the Criminal Code;
- (b) constitute hate propaganda within the meaning of subsection 281.3(8) of the Criminal Code;
- (c) are of a treasonable character within the meaning of section 46 of the Criminal Code; or
- (d) are of a seditious character within the meaning of sections 60 and 61 of the Criminal Code".

The goods have been examined and their importation into Canada is prohibited under the provisions of section 114 of the Customs Tariff and code 9956 of Schedule V11.

PLEASE READ THE BACK OF YOUR NOTICE OF DETENTION/DETERMINATION (FORM K27) FOR YOUR OPTIONS. INDICATE YOUR DECISION BELOW AND RETURN THIS FORM TO THE ADDRESS INDICATED ABOVE.

- (1) ABANDON GOODS TO THE CROWN FOR SUBSEQUENT DESTRUCTION
- (2) APPEAL THIS DETERMINATION PURSUANT TO SECTION 60 OF THE CUSTOMS ACT ON FORM B2 WITHIN 90 DAYS OF THE DATE OF THE WRITTEN NOTICE. FORMS OBTAINABLE AT ANY CUSTOMS OFFICE
- (3) EXPORT GOODS FROM CANADA UNDER CUSTOMS SUPERVISION AND AT IMPORTER'S EXPENSE

IF BLOCK (2) IS CHECKED Appeals on Form B2 fully completed and signed, should be directed to:

Revenue Canada Customs & Excise
P.O. Box 10, Station "A"
Toronto, Ontario
MSW 1A3
ATTN: TPA Unit E Rulings & Appeals

IF BLOCK (3) IS CHECKED Goods may be exported by any means other than through the mails, providing this is done under Customs supervision and at importers expense. Since Canada Post prohibits the use of the mailing system for Obscene Matter you must make arrangements with a Canada Customs Bonded Carrier to export the goods from Canada

When arrangements have been made by you, please contact the following Point of Entry:

International Mail, Arsenals,
1400 Lakeshore Rd. E.
Mississauga, Ontario
L5E 1E9

Telephone: 278-6711.
Tel. No. 973-8140

Murray Musgrave CS
For U.P.A. Bodans
HEAD, PROHIBITED IMPORTATIONS UNIT.

This is Exhibit.....M..... referred to in the
affidavit of Gerardus Ysaak Wilfred Heddema.
sworn before me, this 25th.....
day of October..... 1989.....

A COMMISSIONER FOR TAKING AFFIDAVITS

GERARDUS YSAAK WILFRED HEDDEMA,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires September 8, 1992.

NOTICE OF DETENTION/DETERMINATION
AVIS DE RETENUE OU DE CLASSEMENT TARIFAIRES

Importer / Importateur

9956

Glad Day Bookshop**598 Yonge St¹
Toronto Ontario
MAY 123**

(Indicates date of entry)

Regional Control No.
N° de contrôle régional**3730-2/6XT 2174**

Point of Entry

Bureau d'entrée

Intl Mail

Point of Entry Control No.

N° de contrôle du bureau d'entrée

CO 1804

Date

Oct 4, 1989

PART A — NOTICE OF DETENTION

The following goods have been detained for a determination of tariff classification. Once a determination has been made, you will be notified in writing.

Description of goods / Désignation des marchandises

25 Soft Cover Books- Meatmen Vol. 5

Exporter / Exportateur

Inland Book Co, 254 Bradley St East Haven Conn. 06512

PARTIE A — AVIS DE RETENUE

Les marchandises désignées ci-après ont été retenues aux fins du classement tarifaire. Nous vous aviserons par écrit du classement effectué.

PART B — NOTICE OF DETERMINATION

The following goods have been examined and their importation into Canada is prohibited under the provisions of s. 114 of the Customs Tariff and code 9956 of Schedule VII.

The magazine Meatmen Vol. 5 is prohibited

This represents a determination pursuant to section 58 of the Customs Act. Your rights respecting this determination are set out on the reverse of this form.

Customs Officer / Agent des douanes

Title / Titre

Date of Determination / Date de classement

The following goods have been examined and their importation into Canada is admissible.

Please contact Canada Customs at the point of entry to make arrangements for the payment of duties on the admissible goods.

Cette décision constitue un classement aux termes de l'article 58 de la Loi sur les douanes. Vos droits concernant ce classement sont énoncés au verso de la présente forme.

Act 18/89

Après examen, il a été établi que les marchandises désignées ci-après sont admissibles au Canada.

Veuillez communiquer avec les douanes canadiennes au bureau d'entrée afin de prendre des arrangements pour le paiement des droits.

SECTION 1	Type / Genre	Length / Longueur	Format
	Film	mm	Videotape Ruban magnétoscopique
	Book	cm	Format
	Booklet	mm	Brochure
	Book	mm	Publicité
	Book	mm	Photograph
	Book	mm	Booklet
	Book	mm	Autre

SECTION 1	Mode of Transport / Mode de transport	Were goods declared? Les marchandises ont-elles été déclarées?	Yes Oui	No Non
	Mail		X	

SECTION 1	If not declared, mode of concealment / Si non déclarées, mode de dissimulation
-----------	--

SECTION 1	Classification (Memorandum D9-1-1)	Were goods declared? Les marchandises ont-elles été déclarées?	Yes Oui	No Non
	a) Sex With Violence Violence sexuelle	<input type="checkbox"/> b) Incest Inceste	<input checked="" type="checkbox"/> c) Necrophilia Nécrophilie	<input checked="" type="checkbox"/> d) Bestiality Bestialité
	b) Child Sex Pornographie enfantine	<input type="checkbox"/>	<input type="checkbox"/> e) Hate Propaganda Propagande haineuse	<input checked="" type="checkbox"/> f) Anal Penetration Pénétration anale
		<input type="checkbox"/>	<input type="checkbox"/> g) Other Autre	<input checked="" type="checkbox"/> h) Other Autre

SECTION 1	Title / Titre	Quantity / Quantité
-----------	---------------	---------------------

SECTION 1	pal / Date d'appel	Date sent to H.Q. / Date envoyé à l'A.C.	Disposition
-----------	--------------------	--	-------------

SECTION 1	In Sheet / Feuille supplémentaire
-----------	-----------------------------------

SECTION 1	<input type="checkbox"/> Yes / Oui	<input type="checkbox"/> No / Non
-----------	------------------------------------	-----------------------------------

SECTION 1	REVENUE — CUSTOMS AND EXCISE
-----------	------------------------------

SECTION 1	MINISTÈRE DU REVENU NATIONAL — DOUANES ET ACCISE
-----------	--

Commodity Specialist
P.O. Box 10, Station "A"
Toronto, Ontario
M5W 1A3

FILE NO. 3730-2/64T 2174

DATED

Oct. 16/89

Tariff code 9956 covers "Books, printed paper, drawing, paintings, prints, photographs or representations of any kind that

- (a) are deemed to be obscene under subsection 159 (8) of the Criminal Code;
- (b) constitute hate propaganda within the meaning of subsection 281.3(8) of the Criminal Code;
- (c) are of a treasonable character within the meaning of section 46 of the Criminal Code; or
- (d) are of a seditious character within the meaning of sections 60 and 61 of the Criminal Code".

The goods have been examined and their importation into Canada is prohibited under the provisions of section 114 of the Customs Tariff and code 9956 of Schedule VII.

PLEASE READ THE BACK OF YOUR NOTICE OF DETENTION/DETERMINATION (FORM K27) FOR YOUR OPTIONS. INDICATE YOUR DECISION BELOW AND RETURN THIS FORM TO THE ADDRESS INDICATED ABOVE.

- (1) ABANDON GOODS TO THE CROWN FOR SUBSEQUENT DESTRUCTION
- (2) APPEAL THE DETERMINATION PURSUANT TO SECTION 60 OF THE CUSTOMS ACT ON FORM B2 WITHIN 90 DAYS OF THE DATE OF THE WRITTEN NOTICE. FORMS OBTAINABLE AT ANY CUSTOMS OFFICE.
- (3) EXPORT GOODS FROM CANADA UNDER CUSTOMS SUPERVISION AND AT IMPORTER'S EXPENSE.

IF BLOCK (2) IS Appeals on Form B2 fully completed and signed, should be CHECKED directed to:

Revenue Canada Customs & Excise
P.O. Box 10, Station "A"
Toronto, Ontario
M5W 1A3
ATTN: TPA Unit E Rulings & Appeals

IF BLOCK (3) IS Goods may be exported by any means other than through CHECKED the mails, providing this is done under Customs supervision and at importers expense. Since Canada Post prohibits the use of the mailing system for Obscene Matter you must make arrangements with a Canada Customs Bonded Carrier to export the goods from Canada.

When arrangements have been made by you, please contact the following Point of Entry:

International Mail, Arsenals,
1400 Lakeshore Rd. E.
Mississauga, Ontario
L5E 1E9

Telephone: 278-6711
Tel. No. 973-8140


For C.P.A. Bodanis
HEAD PROHIBITED IMPORTATIONS UNIT.

Canada



Revenue Canada
Customs and Excise

Revenu Canada
Douanes et Accise

NOTICE OF DETENTION/DETERMINATION
AVIS DE RETENUE OU DE CLASSEMENT TARIFAIRES

Importer/Importateur

Glad Day Bookshop
598A Yonge St
Toronto Ontario
M4Y 1Z3

9956

Regional Control No. N° de contrôle régional	
Point of Entry Bureau d'entrée	Int'l mail
Point of Entry Control No. N° de contrôle du bureau d'entrée	CO 1805
Date	Oct 4, 1989

PART A — NOTICE OF DETENTION

The following goods have been detained for a determination of tariff classification. Once a determination has been made, you will be notified in writing.

PARTIE A — AVIS DE RETENUE

Les marchandises désignées ci-après ont été retenues aux fins du classement tarifaire. Nous vous aviserons par écrit du classement effectué.

Description of goods/Désignation des marchandises

20 Books- Surfer Sex
20 Books- Cream Vol. 7
15 Books- Sex Stop Vol. 3
3 Books- Hot Tricks Vol. 5

Exporter/Exportateur

Bookpeople 2929 Fifth St Berkeley CA 94710

MINISTÈRE DU REVENU NATIONAL — DOUANES ET ACCISE

DEPARTMENT OF NATIONAL REVENUE — CUSTOMS AND EXCISE

1 — CONSIGNEE/CONSIGNATAIRE

This is Exhibit..... referred to in the
affidavit of..... Jeanne D. Maldenhamer
sworn before me, this..... 25th.....
day of..... October..... 1989.....

A COMMISSIONER FOR TAKING AFFIDAVITS
GERARDUS YSAAK WILFRED HEDDEMA,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires September 8, 1992.

Commodity Specialist
P.O. Box 10, Station "A"
Toronto, Ontario
M5W 1A3

FILE NO. 3730-2/64T 2/75

DATED Oct. 16/89.

Tariff code 9956 covers "Books, printed paper, drawing, paintings, prints, photographs or representations of any kind that

- (a) are deemed to be obscene under subsection 159 (8) of the Criminal Code;
- (b) constitute hate propaganda within the meaning of subsection 281.3(8) of the Criminal Code;
- (c) are of a treasonable character within the meaning of section 46 of the Criminal Code; or
- (d) are of a seditious character within the meaning of sections 60 and 61 of the Criminal Code".

The goods have been examined and their importation into Canada is prohibited under the provisions of section 114 of the Customs Tariff and code 9956 of Schedule VII.

PLEASE READ THE BACK OF YOUR NOTICE OF DETENTION/DETERMINATION (FORM K27) FOR YOUR OPTIONS. INDICATE YOUR DECISION BELOW AND RETURN THIS FORM TO THE ADDRESS INDICATED ABOVE.

- (1) ABANDON GOODS TO THE CROWN FOR SUBSEQUENT DESTRUCTION
- (2) APPEAL THE DETERMINATION PURSUANT TO SECTION 60 OF THE CUSTOMS ACT ON FORM B2 WITHIN 90 DAYS OF THE DATE OF THE WRITTEN NOTICE. FORMS OBTAINABLE AT ANY CUSTOMS OFFICE.
- (3) EXPORT GOODS FROM CANADA UNDER CUSTOMS SUPERVISION AND AT IMPORTER'S EXPENSE.

IF BLOCK (2) IS Appeals on Form B2 fully completed and signed, should be CHECKED directed to:

Revenue Canada Customs & Excise
P.O. Box 10, Station "A"
Toronto, Ontario
M5W 1A3
ATTN: TPA Unit E Rulings & Appeals

IF BLOCK (3) IS Goods may be exported by any means other than through CHECKED the mails, providing this is done under Customs supervision and at importers expense. Since Canada Post prohibits the use of the mailing system for Obscene Matter you must make arrangements with a Canada Customs Bonded Carrier to export the goods from Canada.

When arrangements have been made by you, please contact the following Point of Entry:

International Mail, Arsenals,
1400 Lakeshore Rd. E.
Mississauga, Ontario
L5E 1E9

Telephone: 278-6711
Tel. No. 973-8140

 M. W. Wagnon CS
For C.P.A. Bodanis
HEAD PROHIBITED IMPORTATIONS UNIT.



Revenue Canada
Customs and Excise

Revenu Canada
Douanes et Accise

Canada

Importer/Importateur

GLAD Bay Bookshop
598 A Yonge St.
TORONTO, ONT

M4Y 1Z3

**NOTICE OF DETENTION/DETERMINATION
AVIS DE RETENUE OU DE CLASSEMENT TARIFAIRES**

9956

Regional Control No.
N° de contrôle régional

Point of Entry
Bureau d'entrée

410 FORT ERIE

Point of Entry Control No.
N° de contrôle du bureau d'entrée

FE-017

Date

AUGUST 10, 1989

PART A — NOTICE OF DETENTION

The following goods have been detained for a determination of tariff classification. Once a determination has been made, you will be notified in writing.

PARTIE A — AVIS DE RETENUE

Les marchandises désignées ci-après ont été retenues aux fins du classement tarifaire. Nous vous aviserons par écrit du classement effectué.

Description of goods/Désignation des marchandises

2 boxes containing 103 books. Titles as per attached listing.

Exporter/Exportateur

INLAND Book Co., 254 Bradley St. East Haven, CT, 06512

MINISTERE DU REVENU NATIONAL — DOUANES ET ACCISE

DEPARTMENT OF NATIONAL REVENUE — CUSTOMS AND EXCISE

1 — CONSIGNEE/CONSIGNATAIRE

This is Exhibit referred to in the
affidavit of Jeavid Molchenauer
sworn before me, this 25th
day of October 1989

A COMMISSIONER FOR TAKING AFFIDAVITS

GERARDUS YSAAK WILFRED HEDDEMA,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires September 8, 1992.

Titles

Fag Rag
Meat
Hot Tricks
Humongous
Meatmen Volume 5
10 1/2 Inches
When I Was 18
The Boys in Blue
Greek Ways
And Still More Meatmen Volume 3



Quantity

6 each
10 each
10 each
5 each
25 each
10 each
20 each
5 each
2 each
10 each

In Ottawa for ruling
spoke with Killis in late August
no determination

Court File No.

IN THE FEDERAL COURT OF CANADA

IN THE TRIAL DIVISION

B E T W E E N:

GLAD DAY BOOKSHOP INC. and
JEARLD MOLDENHAUER

Applicants

- and -

HER MAJESTY THE QUEEN,
MINISTER of NATIONAL REVENUE and
DEPUTY MINISTER of NATIONAL REVENUE
for CUSTOMS and EXCISE

Respondents

MOTION RECORD

ILER, CAMPBELL AND ASSOCIATES
Barristers and Solicitors
150 Simcoe Street
Toronto, Ontario
M5H 3G4

(416) 598-0103

CHARLES CAMPBELL
Solicitor for the Applicants